



CDBG Procurement

For Grant Administrators

Procurement 101

- When and why procurement is required
- How to purchase goods and services in accordance with CDBG regulations
- Summary of four methods
- Summary of RFP and RFQ processes.

Procurement: Overview-

- State and local recipients of CDBG funds are responsible for ensuring that goods and services are procured competitively and in accordance with established procurement rules and regulations.
- Local procurement policies should describe how the recipient will procure supplies, materials, services and equipment-

Procurement: Overview-

- The policy should assure that all purchases are handled fairly and in a manner that encourages full and open competition.
- Recipients should follow the procedures established in the policy and document how all procurements were handled-

Overview – continued.

- Every agency should keep procurement records that allow an auditor or other interested party to track the specific nature of the goods or services bought with public funds, and the entire process used to purchase those goods and services. The purpose of this documentation is to show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

State Procurement Laws and Policies-

CDBG program rules are at 24 CFR Part 570.489(g) and require the following:

- *State must establish requirements for local procurement policies and procedures based on full and open competition*
- The Code of Alabama 1975 (Title 39 and Title 41)
 - <http://alisondb.legislature.state.al.us/acas/codeofalabama/1975/coatoc.htm>

“Cost plus” contracts are prohibited-

State Procurement Laws and Policies (continued.)

- The state must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations
- All CDBG recipients must obtain certification from any transaction participant that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation.

Procurement Standards-

CDBG recipients must use procurement procedures that include the following:

- Maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders
- Maintain a written code of standards governing performance of employees in contract award and administration-

Procurement Standards (continued.)

- Review transactions to avoid unnecessary or duplicative purchase
- Contract only with responsible contractors
- Maintain written records for each procurement action sufficient to detail the significant history of the transaction
- Adopt written procedures to handle and resolve disputes relating to procurement actions.

Competition

- Must allow for full and open competition
- No geographical preference (unless specifically allowed by Federal law)
- No placing of unreasonable requirements on bidders
- Must have written selection procedures
- Must clearly identify all bidding requirements
- Prequalified lists of persons, firms or products must be current

Procurement Methods

There are four types of procurement methods:

- Small Purchase Method
- Competitive Sealed Bid Method
- Competitive Proposal Method
- Noncompetitive or Sole Source Provider Method

Small Purchase

- Best suited to obtaining small quantities of supplies or low cost professional services (audits, appraisals, etc)
- Must be less than \$15,000 for purchases governed by Title 41; or \$50,000 (or less) for purchases governed by Title 39 (Public Works)
- Competition is sought through oral or written price quotations

Competitive Sealed Bid-

- Typically used in the procurement of construction contracts
- Award is based on a fixed bid price
- Awarded to firm that is most responsible bidder who is also the most responsive to the bid request-

Competitive Sealed Bid-

Competitive Seal Bid Process:

- Obtain Federal Wage Rates
- Have Architect/Engineer prepare technical bid specifications
- Include “Standard Bid Package” in the bid/contract documents
- Have Attorney Review Documents
- Prequalify Contractors *(optional) (see Code of Alabama, Sec 39-2-4 (b))-*

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

- Advertise:
 - State, County, or instrumentality thereof
 - *at least once each week for three consecutive weeks*
 - Municipality, or instrumentality thereof
 - *at least once in a newspaper of general circulation published in the municipality*
 - *If no newspaper, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined.*
 - *In addition to bulletin board notice, sealed bids shall be solicited by mail to all persons who have request they be listed for solicitation on bids for the public works contracts*

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

(In addition)

- With the exception of the Department of Transportation, for "all public works contracts" involving an estimated amount in excess of **\$500,000,** awarding authorities shall also advertise for sealed bids "at least once in three newspapers of general circulation throughout the state."

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

- The advertisements shall briefly describe:
 - the improvement
 - state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority
 - state the procedure for obtaining plans and specifications
 - state the time and place in which bids shall be received and opened
 - and identify whether prequalification is required and where all written prequalification information is available for review

Code of Alabama, Section 39-2-2 and 39-2-4

Competitive Sealed Bid-

- **Competitive Seal Bid Process:** *(continued)*
 - Distribute bid documents (plans, spec, etc.) to interested parties.
 - Verify Wage Decision 10 days prior to bid opening
 - Receive / Log-In Bids-

Competitive Sealed Bid.

- **Competitive Seal Bid Process:** *(continued)*
 - Conduct Public Bid Opening
 - Review Bids
 - Verify Low Bidder's debarred status and evidence of insurance
 - Award Contract *(within 30 days of bid opening)*
 - Secure Payment/Performance Bonds
 - Execute Contract.

Competitive Proposal Method

- More than one source submitting a proposal
Either:
 - “Fixed-Price”
 - Or, “Not-To-Exceed” type contract is awarded
- Typically used in the selection of high cost professional service providers (Admin, Engineering, etc)
- Two types:
 - Request for Proposal (RFP)
 - Request for Qualifications (RFQ)

Competitive Proposals – RFP-

- Must clearly and accurately state technical requirements for goods and services required
- Grantee must publicize the RFP, and honor reasonable requests for an opportunity to compete
- Proposals must be solicited from an adequate number of qualified sources
- Grantee must conduct a technical evaluation of the submitted proposals-

Competitive Proposals – RFP (continued.)

- Grantee must conduct negotiations with responsive and responsible offerors, based on evaluation of proposals
- Grantee must award the contract to the most responsive and responsible offer or
- The successful offeror must clearly be the most advantageous source of the goods and services.

Competitive Proposals – RFQ.

For procurement of architecture or engineering services Request for Qualifications (RFQ) method may be used

- Most qualified competitor is selected based on evaluation of qualifications
- Price is “**not**” used as a selection factor
- This approach may be used **only** to purchase architectural and engineering services.

Policy Letter #1, Revision 8

Policy on selection of Engineers, Architects, Consultants, other professional Services relating to Procurement of and Expenditures made, in regard to Sate CDBG Funds.

- Services not more than \$100,000 - grantee may use "Small Purchase Procedures"
- Services costing over \$100,000 - require competitive negotiations as stipulated in the Common Rule as revised by ADECA

Non-competitive/Sole-Source Provider Method

This method may be used only under VERY limited circumstances

- ❖ Grantee should consult state CDBG staff before utilizing this method
- ❖ Item or service is available from one source (e.g. a specialty survey for a planning report or a company that specializes in horizontal drilling)
- ❖ Can be used when a public emergency or urgency exists (requires explanation of circumstances)
- ❖ Must do a cost analysis verifying proposed cost data

Procuring Other Professional Services

(Environmental reviews, labor standards compliance, independent audit, etc.)

- If paid from CDBG funds:
 - Required to use the RFP method of solicitation
 - Price must be a consideration
 - The RFP must be advertised, with selection criteria included in the legal ad
- If paid from local funds:
 - Select firm of choice adhering to state statutes

Procurement with Small Business Minority/Women Owned Firms

Recipients must make following efforts to use minority and women-owned firms when possible:

- Place qualified firms on solicitation lists
- Divide requirements into smaller tasks
- Use SBA and Minority Business Development Agency services
- Require prime contractors to take same affirmative steps listed above

Documenting Compliance-

Grantees must document following:

- A description of the procurement policies and procedures used on the CDBG-funded project
- Data on all contracts awarded, such as:
 - Names of contractors with contact information
 - Types of contractor (for example, small business, minority-owned, etc.)
 - Amounts of contracts awarded-

Documenting Compliance - continued.

- Evidence that the state has reviewed the local government's procurement records
- Documentation of contract work, including:
 - Copies of award letters
 - Inspection reports
 - Contract amendments
 - Payment log
 - Monitoring letter/findings.

Debarred Contractors

- Must check the Federal list of debarred contractors:
 - All contractors
 - All sub-recipients
 - All local units of government
- <https://www.SAM.gov>

Mandatory Contract Provisions-

- **Provision for remedies** (Legal remedies for breach of contract)
- **Termination for cause and convenience** (All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for the settlement)
- **Non-discrimination** (For all contracts in excess of \$10,000, the contractor must comply with Executive Order 11246 (September 24, 1965) as amended by EO 11375 (October 13, 1967) – contractor will not discriminate based on race, color, religion, sex or national origin.)
- **Reporting Requirements**
- **Patent Rights** (requirements pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract)

Mandatory Contract Provisions continued-

- **Copyrights and rights in data**
- **Access to records** (Access by grantee to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination excerpts and transcriptions)
- **Records retention** (minimum of 3 years after final payments)
- **Compliance with Environmental statutes**
(Clean Air Act, Clean Water Act, and EPA Regulations, \$100,000 or more)
- **Energy efficiency** (Subject to requirements of the Clean Air Act and the Federal Water Pollution Control Act and regulations of the EPA. 40 CFR Part 15) -

Mandatory Contract Provisions – Construction Contracts

- For Construction Contracts
 - Copeland Anti-Kickback Act
 - Compliance with Contract Work Hours and Safety Standards Act
 - Davis-Bacon Act (contracts over \$2,000)
 - Beason Hammon Taxpayer and Citizen Protection Act
 - Title VI, civil Rights Act of 1964 and Section 109 of the H&CD Act of 1974 -

Mandatory Contract Provisions – Construction Contracts

- For Construction Contracts
 - Clause for compliance to the Section 504 of the Rehabilitation Act of 1973 (\$2,500 or more)
 - Clause for compliance with Section 402 of the 1974 Vietnam Veterans Act (\$10,000 or more)
 - Clause for compliance with the Age Discrimination Act 1975 (\$2,000 or more)

Construction Contractor Bonding Requirements

- Bid Bonds
- Performance Bonds
- Payment Bonds

Bid Bonds

- Used to assure bidder's good-faith intentions
- Must be made to the contracting party
- Must equal 5% of the bid price *(State requirement capped at \$10,000 does not apply to Federal Monies)*
- Submitted in a form that guarantees funds availability
- Checks are returned to unsuccessful bidders

Performance Bonds

Used to ensure completion of work

- Bond must be equal to 100% of the contract price *(39-1-1, a)*
- Must be held for up to one year after date of final completion - - - or - - - the length of the warranty period

Payment Bonds

Used to ensure payment to subcontractors and suppliers

- 50% for contracts under \$100,000
- 100% for contracts \$100,000 or over
(Simplified Acquisition Threshold) (24CFR85.36, h (3) & Code of AL 39-1-1)
- Must guarantee payments to subcontractors and material suppliers
- Must be held for up to one year after date of final completion - - - or - - - the length of the warranty period

Conflicts of Interest-

- Black's Law Dictionary defines a "conflict of interest" as:
 - "A real or seeming incompatibility between a persons private interests and his or her public or fiduciary duties"-

Conflicts of Interest – continued-

- Prohibited conflicts:
 - Persons with CDBG responsibilities, decision-making power or information may NOT:
 - Obtain a financial interest or benefit from CDBG activity
 - Have any interest in contract or subcontract
 - Applies to family members and business ties
 - Applies during tenure and 1 year after
- If there is any doubt, the involved individual should recuse self and disclose conflict-

Conflicts of Interest - continued.

- Examples:
 - Grant Administrator cannot help grantee with the procurement of grant administration if they intend to submit proposal
 - Town Clerk cannot sit on bid committee if husband/brother is bidding on a construction contract.

In Review

- Why do we follow procurement?
- Four types of procurement
- Document Compliance
- Debarred Contractors List
- Contract Provisions
- Bonding Requirements
- Conflicts of Interest

In Review

Questions?